

Application No. 09/385,299

REMARKS

By this Amendment, Applicants amend claims 1, 3, 4, 6, 7, 11, 12, 15-17, 30, 32, 33, 35, 36, 40, 41, and 44-46 and add new claims 47-54. Claims 1-17 and 30-54 are therefore pending in this application, upon entry of this Amendment.

In the final Office Action of November 25, 2005,¹ claims 1, 2, 5, 7-10, 12, 13, 15, 16, 30, 31, 34, 36-39, 41, 42, 44, and 45 were rejected under 35 U.S.C. §102(e) as anticipated by U.S. Patent No. 6,363,434 ("*Eytchison*"); claims 6, 11, 14, 17, 35, 40, 43 and 46 were rejected under 35 U.S.C. § 103(a) as unpatentable over *Eytchison* in view of Official Notice; and claims 3, 4, 32, and 33 were objected to as being dependent upon a rejected base claim but were indicated as drawn to allowable subject matter. Applicants appreciate the Examiner's indication of allowable subject matter and address the objection, rejections, and new claims below.

Objection to claims 3, 4, 32, and 33

The Examiner objected to claims 3, 4, 32, and 33 as being dependent upon a rejected base claim, indicating these claims would be allowable if rewritten in independent form with all base and intervening claim recitations. Final Office Action at p. 6. By this Amendment, Applicants rewrite claims 3 and 32 in independent form with all of the features of base claims 1 and 30, respectively. Because claims 3 and 32 are now in the form the Examiner indicated would be allowable, Applicants request withdrawal of the objection and the timely allowance of these claims. Claims 4 and 33 depend upon allowable claims 3 and 32. Applicants therefore request withdrawal of the objection and the timely allowance of those dependent claims.

¹ The final Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether or not any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the final Office Action.

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Rejection under 35 U.S.C. § 102(e)

Applicants traverse the rejection of claims 1, 2, 5, 7-10, 12, 13, 15, 16, 30, 31, 34, 36-39, 41, 42, 44, and 45 under § 102(e) because *Eytchison* fails to anticipate the claims. In order to properly anticipate Applicants' claimed invention under 35 U.S.C. § 102, a single prior art reference must disclose each and every element of the claim at issue, either expressly or under principles of inherency. Further, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." See M.P.E.P. § 2131. Also, "[t]he elements must be arranged as required by the claim." *Id.*

With regard to independent claim 1, *Eytchison* fails to teach at least the following features:

attempting, by the portable access device, to establish a communication link between the portable access device and the first network server using a communication medium that is selected by the portable access device based on the communication protocol and a location of the portable access device with respect to the first network server, wherein the communication medium is selected from the group consisting of: a local wireless LAN, a remote wireless LAN, a wireline LAN, and a Public Switched Telephone Network (PSTN) (emphasis added).

In *Eytchison*'s system, a user application (310) in a home server (214) sends a request to a resource manager (320), also in the home server. When the resource manager grants the request, the resource manager transmits control commands to software device proxies (370a-370i) in the home server, which in turn control the source and destination media devices (210, 211, 212, 222a). See col. 6, line 64 – col. 7, line 9. The Examiner alleged that *Eytchison*'s media devices 210, 211, 212, and 222a "read as portable access devices" and "are in communication with a server (214)." Final Office Action at pp. 2, 7. The Examiner further alleged that *Eytchison*'s "resource manager identifies communications protocols . . . and establishes the communication connection." *Id.* at 2.

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Even if, as the Examiner alleged, *Eytchison*'s media devices 210, 211, 212, and 222a "read as portable access devices," *Eytchison* does not teach the "attempting" feature of claim 1. In *Eytchison*'s system, the media devices 210, 211, 212, and 222a do not "[attempt] to establish a communication link" between themselves and server 214 "using a communication medium that is selected by the portable access device based on the communication protocol and a location of the portable access device with respect to the first network server," as claimed. As explained above and by the Examiner's own admission, the resource manager 320 in the home server 214, not the media devices, establishes communications between devices. To the extent *Eytchison* could be construed as teaching "attempting" to establish a communication link, such attempting would be performed by the resource manager 320 in the home server 214, not "by the portable access device," as recited in claim 1.

Furthermore, even if *Eytchison*'s media devices were to attempt to establish a communication link with server 214, *Eytchison* does not disclose that the media devices attempt to establish a communication link "using a communication medium that is selected by the portable access device based on the communication protocol and a location of the portable access device with respect to the first network server," as recited in claim 1. Indeed, *Eytchison*'s media devices do not select a communication medium, much less select a medium "based on the communication protocol and a location of the portable access device with respect to the first network server," as claimed.

Additionally, *Eytchison*'s disclosure of resource manager 320 does not teach the claimed "attempting." For example, assuming *arguendo* that the resource manager were construed as a portable access device, the resource manager does not attempt to "establish a communication link" between itself and a server "using a communication medium that is selected by the portable

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access device based on the communication protocol and a location of the portable access device with respect to the first network server,” as claimed. Indeed, the resource manager does not attempt to “establish a communication link” between itself and a server, or between a portable access device and a server, using a communication medium that is selected “based on the communication protocol and a location of the portable access device with respect to the first network server,” as claimed.

While *Eytchison*’s resource manager “determines the availability of the source and destination devices . . . and checks whether sufficient bandwidth is available for carrying out the requested action,” the reference does not disclose that the resource manager attempts to establish a communication link using a communication medium that is selected “based on the communication protocol and a location of the portable access device with respect to the first network server . . . ,” as claimed. Col. 7, lines 1-5. Even if, as the Examiner alleged, *Eytchison*’s resource manager “identifies communication protocols . . . and establishes the communication connection,” such functionality does not constitute attempting to establish a communication link using a communication medium selected “based on the communication protocol and a location of the portable access device with respect to the first network server,” as claimed. Final Office Action at p. 2. Indeed, *Eytchison* fails to disclose any element that performs the claimed “attempting.”

For at least the foregoing reasons, *Eytchison* fails to disclose at least the “attempting” feature of claim 1. Because *Eytchison* does not teach each and every feature of claim 1, as a matter of law, it cannot anticipate this claim. As such, the § 102(e) rejection of claim 1 based on *Eytchison* should be withdrawn. Claims 2 and 5 depend upon claim 1 and are distinguishable from *Eytchison* for at least reasons similar to those presented above in connection with claim 1.

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Applicants therefore request withdrawal of the § 102(e) rejection and the timely allowance of claims 1, 2, and 5.

Independent claim 7 recites a combination including:

establishing a communication link between said portable access device and said network server using a communication medium that is selected based on said communication protocol and a location of said portable access device with respect to said network server, wherein said communication medium is selected from the group consisting of: local wireless LAN, remote wireless LAN, wireline LAN, and Public Switched Telephone Network (PSTN) (emphasis added).

Eytchison fails to teach or suggest at least the above-noted features.

The Examiner alleged that *Eytchison*'s media device (210, 212, 222a, 211a) constitutes a "portable access device." Final Office Action at p. 3. The Examiner further alleged that *Eytchison*'s server 214 includes a resource manager that "controls communication lines and bandwidth allocations to the portable access devices . . . [and] thus identifies communication protocols . . . , transmits the protocol to the devices . . . and thus creates the communication links between the server and the portable devices." *Id.*

Eytchison's media devices, even if construed as "portable access" devices, do not establish a communication link between themselves, or any other device in *Eytchison*'s system, and a network server "using a communication medium that is selected based on said communication protocol and a location of said portable access device with respect to said network server," as recited in claim 7. As explained above and by the Examiner's own admission, the resource manager 320 in the home server 214, not the media devices, establishes communications between devices. Furthermore, *Eytchison* does not disclose that the media devices select a communication medium, much less select a communication medium "based on

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said communication protocol and a location of said portable access device with respect to said network server,” as recited in claim 7.

Additionally, *Eytchison*’s disclosure of resource manager 320 does not teach the claimed “establishing.” The resource manager does not establish a communication link between the media devices, or any other device in *Eytchison*’s system, and a network server “using a communication medium that is selected based on said communication protocol and a location of said portable access device with respect to said network server . . . ,” as recited in claim 7. While the resource manager “determines the availability of the source and destination devices . . . and checks whether sufficient bandwidth is available for carrying out the requested action,” *Eytchison* does not disclose that the resource manager “[establishes] a communication link . . . using a communication medium that is selected based on said communication protocol and a location of said portable access device with respect to said network server . . . ,” as claimed. Col. 7, lines 1-5. Even if, as the Examiner alleged, *Eytchison*’s resource manager “controls communication lines and bandwidth allocations to the portable access devices . . . [and] thus identifies communication protocols . . . and . . . creates the communication links between the server and the portable devices,” such functionality does not constitute “establishing a communication link between said portable access device and said network sever using a communication medium that is selected based on said communication protocol and a location of said portable access device with respect to said network server . . . ,” as claimed. Final Office Action at p. 2. Indeed, *Eytchison* fails to disclose any element that performs the “establishing” feature of claim 7.

Because *Eytchison* does not teach each and every feature of claim 7, as a matter of law, it cannot anticipate this claim. As such, the § 102(e) rejection of claim 7 based on *Eytchison*

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should be withdrawn. Claims 8-10 depend upon claim 7 and are distinguishable from *Eytchison* for at least reasons similar to those presented above in connection with claim 7. Accordingly, Applicants request withdrawal of the § 102(e) rejection and the timely allowance of claims 7-10.

Independent claim 12 recites, *inter alia*:

establishing a communication link between said portable access device and said second network server using a communication medium that is selected based on said communication protocol [transmitted to the portable access device from a first network server] and a location of said portable access device with respect to said second network server, wherein said communication medium is selected from the group consisting of: local wireless LAN, remote wireless LAN, wireline LAN, and Public Switched Telephone Network (PSTN) (emphasis added).

Eytchison fails to teach or suggest at least the above-noted features.

The Examiner alleged again that *Eytchison*'s media device (210, 212, 222a, 211a) constitutes a "portable access device." Final Office Action at p. 4. The Examiner also alleged that *Eytchison*'s server 214 includes a resource manager that "controls communication lines and bandwidth allocations to the portable access devices . . . [and] thus identifies communication protocols . . . , transmits the protocol to the devices . . . and thus creates the communication links between the server and the set top box and the portable devices." *Id.*

Eytchison's media devices, whether or not construed as "portable access" devices, do not establish a communication link between themselves, or any other device in *Eytchison*'s system, and a second network server "using a communication medium that is selected based on said communication protocol [transmitted from a first network server] and a location of said portable access device with respect to said second network server . . . ," as recited in claim 12. In fact, the resource manager 320 in the home server 214, not the media devices, establishes communications between devices. Furthermore, the media devices do not select a communication medium, much less select a medium based on a communication protocol

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transmitted from a first server and a location of the portable access device with respect to a second network server, as claimed.

Moreover, *Eytchison*'s resource manager 320 does not establish a communication link between the media devices, or any other device in *Eytchison*'s system, and a second network server "using a communication medium that is selected based on said communication protocol [transmitted from a first network server] and a location of said portable access device with respect to said second network server . . . ," as recited in claim 12. While the resource manager "determines the availability of the source and destination devices . . . and checks whether sufficient bandwidth is available for carrying out the requested action," *Eytchison* does not disclose that the resource manager performs the claimed "establishing." Even if, as the Examiner alleged, *Eytchison*'s resource manager "controls communication lines and bandwidth allocations to the portable access devices . . . and . . . creates the communication links between the server and the set top box and the portable devices," such functionality does not constitute "establishing a communication link between said portable access device and said second network sever using a communication medium that is selected based on said communication protocol [transmitted to the portable access device from a first network server] and a location of said portable access device with respect to said second network server . . . ," as claimed. Final Office Action at p. 4.

According to the Examiner, *Eytchison*'s server 214 constitutes a "first network server" and *Eytchison*'s set top box constitutes a "second network server." *Id.* at pp. 4, 8. *Eytchison*'s resource manager, however, does not establish a communication link between the media devices and the set top box using a communication medium that is selected based on a communication protocol transmitted from server 214 to the devices (or to the resource manager) and based on a

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location of the devices with respect to the set top box. Likewise, the media devices do not establish a communication link between themselves and the set top box using a communication medium that is selected based on a communication protocol transmitted from server 214 to the devices and based on a location of the devices with respect to the set top box. Similarly, the set top box does not establish a communication link between itself and any other device in *Eytchison's* system using a communication medium that is selected based on a communication protocol transmitted from server 214 and a location of the devices with respect to the set top box. Indeed, *Eytchison* fails to disclose any element that performs the claimed "establishing."

Because *Eytchison* does not teach each and every feature of claim 12, as a matter of law, it cannot anticipate this claim. As such, the § 102(e) rejection of claim 12 based on *Eytchison* should be withdrawn. Claims 13, 15, and 16 depend upon claim 12 and are distinguishable from *Eytchison* for at least reasons similar to those presented above in connection with claim 12. Accordingly, Applicants request withdrawal of the § 102(e) rejection and the timely allowance of claims 12, 13, 15, and 16.

Claims 30, 36, and 41 include features similar to those of claims 1, 7, and 12, respectively, although claims 30, 36, and 41 are of different scope than claims 1, 7, and 12 (and from each other). For example, claim 30 recites, *inter alia*:

attempting, by the portable access device, to establish a communication link between the portable access device and the first network server using a communication medium that is selected by the portable access device based on the communication protocol and a location of the portable access device with respect to the first network server, wherein the communication medium is selected from the group consisting of: a local wireless LAN, a remote wireless LAN, a wireline LAN, and a Public Switched Telephone Network (PSTN);

claim 36 recites, *inter alia*:

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establishing a communication link between said portable access device and said network server using a communication medium that is selected based on said communication protocol and a location of said portable access device with respect to said network server, wherein said communication medium is selected from the group consisting of: local wireless LAN, remote wireless LAN, wireline LAN, and Public Switched Telephone Network (PSTN);

and claim 41 recites, *inter alia*:

establishing a communication link between said portable access device and said second network server using a communication medium that is selected based on said communication protocol and a location of the portable access device with respect to said second network server.

The §102(e) rejection of claims 30, 36, and 41 based on *Eytchison* should be withdrawn for at least reasons similar to those presented above in connection with claims 1, 7, and 12 respectively. Claims 31, 34, 37-39, 42, 44, and 45 should be withdrawn as well, since each of those claims depends upon claim 30, 36, or 41 and is similarly distinguishable from *Eytchison*. Accordingly, Applicants request withdrawal of the § 102(e) rejection and the timely allowance of claims 30, 31, 34, 36-39, 41, 42, 44, and 45.

Rejection under 35 U.S.C. § 103(a)

Applicants traverse the rejection of claims 6, 11, 14, 17, 35, 40, 43 and 46 under 35 U.S.C. § 103(a) because a case for *prima facie* obviousness has not been established based on *Eytchison* “in view of Official Notice.” Final Office Action at p. 5. As M.P.E.P. § 2142 states, “[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.” To establish *prima facie* obviousness under 35 U.S.C. § 103(a), three requirements must be met. First, the applied references, taken alone or in combination, must teach or suggest each and every element recited in the claims. See M.P.E.P. § 2143.03 (8th ed. 2001). Second, there must be some suggestion or motivation, either in the reference(s) or in the knowledge generally available to one of ordinary skill in the art, to combine or modify the

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reference(s) in a manner resulting in the claimed invention. Third, a reasonable expectation of success must exist. Moreover, each of these requirements must “be found in the prior art, and not be based on applicant’s disclosure.” M.P.E.P. § 2143 (8th ed. 2001).

In rejecting claims 6, 11, 14, 17, 35, 40, 43 and 46, the Examiner alleged (page 6):

Eytchison only differs from the claims in that the portable devices are hardwired to the server as opposed to being connected in a wireless manner. However, examiner takes Official Notice that it is well-known in the art to establish data communication links using wireless connections. It would have been obvious to one of ordinary skill in the art to modify *Eytchison* to utilize wireless connections on the LAN illustrated in FIG. 2 so as to enhance the convenience of the user by eliminating the need to plug wires into the portable devices.

Claims 6, 11, 14, 17, 35, 40, 43 and 46 depend upon claims 1, 7, 12, 30, 36, and 41. For at least the reasons presented above, *Eytchison* does not teach or suggest each and every element recited in claims 1, 7, 12, 30, 36, and 41. *Eytchison* thus does not teach or suggest each and every element recited in dependent claims 6, 11, 14, 17, 35, 40, 43 and 46, which require all of the features of base claims 1, 7, 12, 30, 36, and 41, respectively.

Moreover, the Examiner’s taking of Official Notice does not cure *Eytchison*’s deficiencies. Even if, as alleged by the Examiner, “wireless connections on a network” were well known and a skilled artisan would have modified *Eytchison* “to utilize wireless connections,” Applicants disputing both notions, the reference would still fail to disclose or suggest at least the respective “attempting” and “establishing” features recited in claims 1, 7, 12, 30, 36, and 41 and required by dependent claims 6, 11, 14, 17, 35, 40, 43 and 46. See Final Office Action at pp. 6, 8. Applicants further submit that *Eytchison*’s deficiencies with respect to claims 1, 7, 12, 30, 36, and 41 were not “well known.” Because the applied art does not teach or suggest each and every element recited in claims 1, 7, 12, 30, 36, and 41 and required by

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dependent claims 6, 11, 14, 17, 35, 40, 43 and 46, *prima facie* obviousness has not been established.

With regard to the Official Notice, the final Office Action states that the "Examiner maintains that . . . wireless connections on a network can be readily and instantly demonstrated." *See* p. 8. The Examiner alleged that "if the term 'wireless LAN' is typed into the US Patent database, several thousand patent references which disclose this feature can be found [and] . . . [i]t is clear that the concept of wireless communications can be readily demonstrated as existing well prior to applicant's invention." *Id.* at pp. 8-9.

Applicants again traverse the Examiner's taking of Official Notice regarding "using wireless connections." Final Office Action at p. 6. Applicants again call the Examiner's attention to the provisions of M.P.E.P. § 2144.03, regarding the "Procedure for Relying on Common Knowledge or Taking Official Notice" and the precedents provided in *Dickinson v. Zurko*, 527 U.S. 150, 50 U.S.P.Q.2d 1930 (1999) and *In re Ahlert*, 424 F.2d, 1088, 1091, 165 U.S.P.Q. 418, 420 (CCPA 1970). In particular, M.P.E.P. § 2144.03 sets forth that "the notice of facts beyond the record which may be taken by the examiner must be 'capable of such instant and unquestionable demonstration as to defy dispute.'" M.P.E.P. § 2144.03 also makes clear, with regard to Official Notice, that "[t]he standard of review applied to findings of fact is the 'substantial evidence' standard under the Administrative Procedure Act (APA)" (citations omitted). M.P.E.P. § 2144.03 points out that "an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support" (citations omitted). Applicants also point out that "[d]eficiencies of the cited references cannot be remedied by . . . general conclusions about what is 'basic knowledge' or 'common sense.'" *In*

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re Lee, 277 F.3d 1338, 1344, 61 U.S.P.Q.2d 1430, 1432-1433 (Fed. Cir. 2002), quoting *In re Zurko*, 258 F.3d at 1385, 59 U.S.P.Q.2d at 1697 (Fed. Cir. 2001).

In this case, Applicants submit that the elements recited in claims 6, 11, 14, 17, 35, 40, 43 and 46 regarding wireless transmission were not unquestionably well-known, and the Examiner has failed to demonstrate the contrary. The Office Action does not provide substantial evidence on the record to show that Applicants' claimed features were so unquestionably well-known "as to defy dispute." See M.P.E.P. § 2144.03. Merely alleging, based on an alleged database search, that "[i]t is clear that the concept of wireless communications can be readily demonstrated as existing well prior to applicant's invention" does not suffice as "substantial evidence." Further, to the extent the Examiner is relying on personal knowledge in alleging that certain subject matter was well known, the Examiner should provide "an affidavit or declaration setting forth specific factual statements and explanation to support the finding." See M.P.E.P. § 2144.03.

For at least the foregoing reasons, Applicants expressly traverse the Examiner's taking of Official Notice. Should the Examiner continue to dispute the patentability of the claims and maintain that certain features were "well known," Applicants request that the Examiner cite a competent prior art reference, or provide an appropriate affidavit or declaration, in substantiation of such conclusions.

Furthermore, as M.P.E.P. § 2141.02 articulates, "[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious (internal citations omitted). In this case, the Examiner merely alleged that *Eytchison* discloses certain elements and that certain elements were well known, without showing that the claimed invention as a whole would have been obvious. Even if the use of

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wireless connections were well known (to which Applicants do not acquiesce), the conjectural conclusions set forth in the Office Action do not suffice to establish a *prima facie* conclusion of obviousness.

Moreover, *prima facie* obviousness has not been established with respect to claims 6, 11, 14, 17, 35, 40, 43 and 46 at least because the requisite motivation to modify *Eytchison* in a manner resulting in Applicants claimed combination is lacking. According to the Federal Circuit, “virtually all [inventions] are combinations of old elements.” *See e.g., In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457 (Fed. Cir. 1998) (citations omitted). An examiner may find every element of a claimed invention in the prior art but mere identification is not sufficient to negate patentability. *Id.* The court explained that “the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed.” *Id.*

In addition, determinations of obviousness must be supported by evidence on the record. *See In re Zurko*, 258 F.3d 1379, 1386 (Fed. Cir. 2001), 59 USPQ2d 1693, 1696-98 (finding that the factual determinations central to the issue of patentability, including conclusions of obviousness by the Board, must be supported by “substantial evidence”). The desire to combine or modify references must be proved with “substantial evidence” that is a result of a “thorough and searching” factual inquiry. *See In re Lee*, 277 F.3d 1338, 1343-1344 (Fed. Cir. 2002), 61 USPQ2d 1430, 1433 (quoting *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1351-52). Additionally, the Federal Circuit has clearly stated that the evidence of a motivation or suggestion to modify a reference must be “clear and particular.” *In re Dembicziak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

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In this case, the final Office Action does not show, by “clear and particular” evidence, that a skilled artisan considering *Eytchison*, and not having the benefit of Applicants’ disclosure, would have been motivated to modify the reference in a manner resulting in Applicants’ claimed combination. The Examiner alleged that a skilled artisan would have modified the reference “so as to enhance the convenience of the user by eliminating the need to plug wires into the portable devices.” Final Office Action at p. 6. This conclusory allegation in the final Office Action is not properly supported and does not establish a motivation or suggestion for modifying *Eytchison* as alleged or in a manner resulting in the invention defined by Applicants’ claims. For example, the Examiner points to evidence in *Eytchison* or from the knowledge available to those skilled in the art regarding such “enhanced convenience.”

As M.P.E.P. § 2143.01 makes clear, “[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination” (citations omitted). In this case, the Examiner has not shown that *Eytchison* “suggests the desirability” of the alleged combination or of a combination resulting in the invention defined by Applicants’ claims.

Applicants submit that the Examiner is impermissibly using teachings of the present application in hindsight to piece together disclosures of the cited reference with allegedly well known subject matter. Examiners, however, may not pick and choose among isolated disclosures in references to defeat patentability of a claimed invention. Such picking and choosing amounts to improper hindsight reconstruction, and is prohibited. *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988). For at least the foregoing additional reasons, *prima facie* obviousness has not been established with respect to claims 6, 11, 14, 17, 35, 40, 43 and 46.

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As noted above, a case for *prima facie* obviousness further requires a reasonable expectation of success in modifying the reference at the time the invention was made. *See* M.P.E.P. § 2143.02. In this case, there is no evidence on the record to support the notion that a reasonable expectation of success would have existed at the time of the invention arising from the modification of *Eytchison* "to utilize wireless connections." *Eytchison* explains that the electronic media devices (e.g., VCR, TV, CD player, DVD player) are connected to the home server via an IEEE 1394-1995 bus, which is used to provide multiple channels for isochronous data transfers (col. 5., line 30 – col. 6, line 5). The Examiner fails to show that there would have been a reasonable expectation of success arising from providing multiple channels for isochronous data transfers wirelessly at the time of the invention. That is to say, there is no evidence on the record to support the notion that, at the time the invention was made, there would have been a reasonable expectation of success from providing wireless transmission of the IEEE 1394 protocol. Indeed, Applicants submit that there would not have been a reasonable expectation of success from providing wireless multiple-channel isochronous data transfer for electronic media devices (e.g., VCR, TV, CD player, DVD player). For at least these additional reasons, *prima facie* obviousness has not been established with respect to claims 6, 11, 14, 17, 35, 40, 43 and 46.

Because *prima facie* obviousness has not been established, the § 103(a) rejection of claims 6, 11, 14, 17, 35, 40, 43 and 46 should be withdrawn. Applicants therefore request withdrawal of the § 103(a) rejection and the timely allowance of these pending claims.

New claims 47-54

New claims 47 and 48 depend upon claim 1, and new claims 49 and 50 depend upon claim 30. For at least reasons similar to those presented above in connection with claims 1 and 30, *Eytchison* does not teach or suggest each and every feature required by new claims 47-50.

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Additionally, the applied art fails to teach or suggest the additional features recited in new claims

47-50. Applicants thus request the timely allowance of new claims 47-50.

New independent claim 51 recites, *inter alia*:

attempting, by the access device, to establish a communication link between the access device and the first server, in accordance with the communication protocol, wherein the attempting includes initiating a first attempt to establish communication with the first server via a local wireless network, initiating a second attempt to establish communication via a remote wireless network if the first attempt fails, and initiating a third attempt to establish communication via a public switched telephone network if the second attempt fails.

Applicants submit that *Eytchison* fails to teach or suggest at least these features. Applicants therefore request the timely allowance of new claim 51. New claims 52-54 require all of the features of claim 51 and are likewise not anticipated or rendered obvious by the applied art.

Further, the applied art fails to teach or suggest the additional features recited in new claims 52-54. Applicants thus request the timely allowance of new claims 52-54.

Conclusion

Applicants request the reconsideration and reexamination of this application in view of the foregoing and the timely allowance of the pending claims.


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Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 07-2347.

Respectfully submitted,

Dated: January 25, 2006

Respectfully submitted,

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